

## **REMARKS/ARGUMENTS**

The applicant would like to take this opportunity to thank the Examiner for the courtesy extended to his undersigned representative during their telephone interview of September 28, 2004. During that interview, the meaning of the first rejection under 35 U.S.C. § 112 was discussed. No agreement was reached as to the allowability of the claims.

Claims 1-29, 34, 35 and 41-57 are pending, claims 1 and 53 being independent. By the amendment above, claims 1, 4, 34, 35 and 53 have been amended. Claims 4 and 35 were amended to correct typographical errors therein, and it is believed that the amendments made to those claims are merely cosmetic. No new matter has been added.

The Examiner rejected claims 1-29, 34, 35 and 41-57 under 35 U.S.C. § 112, 2d ¶, as indefinite for use of the term “post-auction bid”. By the amendment above, the applicant has amended independent claims 1 and 53 (from which all other claims depend) to clarify the time period after which the auction leader is permitted to place a further bid. Withdrawal of this rejection is therefore solicited.

The Examiner also made a comment concerning the preamble to the claims referring to “on-line auctions”, but the thought was unfinished. During the interview this comment was discussed, and it was agreed that the rejection was incomplete. To the best understanding of the applicant, the above amendment has addressed any potential for ambiguity in the claims, and so withdrawal of this rejection, as well, is solicited.

The Examiner also rejected claims 53-57 under 35 U.S.C. § 112, 2d ¶, as indefinite as being directed to a “system”, taking the position that this was unclear as referring to either a method or an apparatus. The applicant intends the term to refer to an apparatus. Withdrawal of this rejection is therefore also solicited.

Next, the Examiner rejected the claims under 35 U.S.C. § 101, as they allegedly lack reference to any technology. By the amendment above, claims 1 and 53 have been expressly amended to refer to a computer network, and so it is believed that this rejection is now met. Withdrawal thereof is accordingly solicited.

Finally, the Examiner rejected the claims under 35 U.S.C. § 102(b) as allegedly anticipated by United States Patent No. 3,581,072 (Nymeyer). This reference was addressed in the applicant's response to the prior Office Action, in which it was pointed out that Nymeyer fails to teach or suggest permitting an auction leader to make a bid after the auction has closed. In the pending Office Action, the Examiner took the position that, while this may well constitute a patentable distinction from Nymeyer, this distinction was not properly set forth in the claims for the reasons set forth in the rejection under 35 U.S.C. § 112 relating to the definition of a "post-auction bid". Since that rejection has now been met, and the distinction more clearly drawn, it is respectfully submitted that the invention as claimed is distinct from Nymeyer because Nymeyer fails to teach or suggest method or apparatus for permitting an auction leader to bid after the auction has been closed. For the reasons set forth in detail in the response to the prior Office Action, and as, apparently, accepted by the Examiner, it is respectfully submitted that the invention as now claimed and described is patentably distinct from Nymeyer.

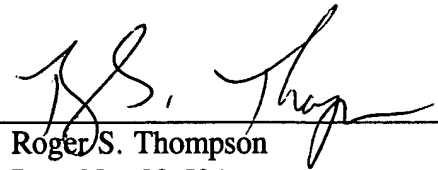
Accordingly, all grounds for objection and/or rejection having been addressed, and there being no other basis for refusing to allow the application, early and favorable action is respectfully solicited.

It is believed that no further fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By

A handwritten signature in cursive script, appearing to read "R.S. Thompson", is written over a horizontal line.

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